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July 14, 2005

The Honorable Andrew Card
Chief of Staff
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

In the past week, there has been extensive attention given to reports disclosing new details about the role that your deputy, Karl Rove, played in the leak of the identity of CIA agent Valerie Wilson. These accounts raise many important questions that need to be answered, including the culpability of Mr. Rove and whether he acted in isolation or as part of a broader White House conspiracy to out a covert CIA operative to discredit her husband, Ambassador Joseph Wilson.

I am writing, however, about a different — and often overlooked — matter, which is whether the White House complied with its legal responsibilities to investigate and take remedial action in the days between July 14, 2003, when Robert Novak's column disclosing Ms. Wilson's identity was first published, and September 28, 2003, when it was publicly disclosed that the CIA requested a Justice Department investigation.

Executive Order 12958 sets out specific requirements that the White House must take after it learns of a potential release of classified information, including investigating the source of the leak and taking remedial actions to prevent future breaches of national security. These actions should have been triggered immediately after the publication of Mr. Novak's article on July 14, 2003, yet there is no indication that the White House took any of these steps. To the contrary, White House spokesman Scott McClellan dismissed suggestions that an internal investigation was warranted at press conferences on July 22 and July 23, 2003.

In this and other instances, the Administration's response to security breaches appears to be dictated by politics, not the national interest. Administration officials have reacted sharply and demanded immediate investigations when an alleged leak calls White House actions into question. The Administration opened an investigation into whether former Secretary of the Treasury Paul O'Neill disclosed classified information after he criticized the Administration in a television interview, and the Administration demanded an immediate investigation after the disclosure of evidence that there may have been advance warnings of possible attacks on

September 11. Yet no action appears to have been taken after the outing of Ms. Wilson or the disclosure of classified information to journalists who portray President Bush in a favorable light.

I hope you can clarify these important matters. Independent of who leaked Ms. Wilson's identity, Congress and the public should know whether the White House acted responsibly — and in compliance with its legal obligations — in the days after this serious national security breach occurred.

Procedures for Safeguarding Classified Information

Executive Order 12958 sets forth a range of administrative requirements concerning how federal agencies should safeguard national security secrets. These requirements apply to the White House.¹

Under E.O. 12958, agencies must establish procedures to restrict access to classified information to employees who have undergone background checks and signed "Classified Information Nondisclosure Agreements," which are contracts in which employees agree not to divulge classified information.² In addition, agencies must establish an effective system to restrict access to classified information to only those employees with an official "need to know."³ The executive order defines a "need to know" as "a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function."⁴

E.O. 12958 also requires that persons with access to classified information receive appropriate training on their obligations to protect the information.⁵ This security training includes instruction on how to store classified information, as well as instruction on what constitutes an impermissible disclosure. The executive order makes clear that confirming the accuracy of classified information, or calling attention to classified information that has appeared publicly, is considered just as much a violation as an unauthorized leak.⁶

¹ Exec. Order No. 12958 (as amended), sec. 6.1(b) (defining the term "agency" to include "any other entity within the executive branch that comes into possession of classified information").

² *Id.* at sec. 4.1(a).

³ *Id.* at sec. 4.1(a)(3).

⁴ *Id.* at sec. 6.1(z).

⁵ *Id.* at sec. 4.1(b) ("Every person who has met the standards for access to classified information ... shall receive contemporaneous training on the proper safeguarding of classified information and on the criminal, civil, and administrative sanctions that may be imposed").

⁶ *Id.* at sec. 1.1(b) ("Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information"). See also Information Security Oversight Office, National Archives and Records Administration, *Briefing Booklet: Classified Information Nondisclosure Agreement (Standard Form 312)* (undated):

Several key requirements apply when a leak occurs. Under E.O. 12958, executive branch officials must investigate the security breach, take administrative actions against employees who violate these rules, and adjust procedures in order to prevent similar security breaches in the future. E.O. 12958 provides that when a violation or infraction of the administrative rules occurs, each agency must "take appropriate and prompt corrective action."⁷ This may include a determination of whether individual employees improperly obtained access to or disseminated classified information. If employees violated their nondisclosure agreements, sanctions may be warranted.⁸ The executive order requires that "at a minimum," the agency must "promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards."⁹

The Bush Administration's Response

There are important unanswered questions regarding whether the White House followed these administrative requirements after Ms. Wilson's identity was revealed by Robert Novak on July 14, 2003.

The publication of Mr. Novak's column was indisputable evidence of a security breach. It revealed that Valerie Wilson "worked for the CIA" and was "an agency operative on weapons of mass destruction."¹⁰ According to Mr. Novak's column, his sources were "two senior administration officials."¹¹ Shortly after the publication of the column, Mr. Novak reiterated that two Bush Administration officials provided him with the information he published on Ms. Wilson.¹²

Question 19: If information that a signer of the SF 312 knows to have been classified appears in a public source, for example, in a newspaper article, may the signer assume that the information has been declassified and disseminate it elsewhere?

Answer: No. Information remains classified until it has been officially declassified. Its disclosure in a public source does not declassify the information. Of course, merely quoting the public source in the abstract is not a second unauthorized disclosure. However, before disseminating the information elsewhere or confirming the accuracy of what appears in the public source, the signer of the SF 312 must confirm through an authorized official that the information has, in fact, been declassified. If it has not, further dissemination of the information or confirmation of its accuracy is also an unauthorized disclosure.

⁷ *Id.* at sec. 5.5(e).

⁸ *Id.* at sec. 5.5(c) ("Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions").

⁹ *Id.* at sec. 5.5(d).

¹⁰ *The Mission to Niger*, Chicago Sun-Times (July 14, 2003).

¹¹ *Id.*

¹² On July 17, 2003, *The Nation's* David Corn reported, "Novak tells me he was indeed tipped off by government officials and had no reluctance about naming her [Plame]. 'I figured if they gave it to me,' he says, 'they'd give it to others.'" *NigerGate Thuggery*, *The Nation* (posted on the magazine's website on July 17, 2003, and printed in the August 4, 2003, edition). In addition, *Newsday* reported on July 23, 2003: "Novak, in an interview, said his sources had come to him with the information. 'I didn't dig it out, it was given to me,' he said. 'They thought it was significant, they gave me the name and I used it.'" *Columnist Blows CIA Agent's Cover*, *Newsday* (July 23, 2003).

Under E.O. 12958, the White House should have taken “prompt” action to ensure that the breach was investigated. The White House had a legal and moral obligation to determine whether any nondisclosure agreements were violated, whether individuals without security clearance obtained classified information, and whether national security information was compromised. The White House also should have assessed its systems for safeguarding classified information and taken any corrective action necessary to prevent future security breaches.

There is little evidence, however, that the White House responded as the executive order required. To the contrary, the White House appeared to ignore or dismiss questions about whether it would investigate the matter. When asked on July 22 whether the White House would “support an investigation” into the security breach, White House spokesman Scott McClellan would not address the question, stating instead: “let me make it very clear, that’s just not the way this White House operates.”¹³

On the next day, July 23, 2003, a reporter asked Mr. McClellan whether the White House was doing an internal investigation to find out whether White House officials disclosed the agent’s identity. Mr. McClellan again dodged the question, replying: “I have no reason to believe that there is any truth that that had happened.”¹⁴ When he was pressed in follow-up question, Mr. McClellan dismissed the value of an investigation, saying: “it’s usually a fruitless search.”¹⁵

This apparent failure to take Mr. Novak’s disclosures seriously continued for over two months. There did not appear to be a change in the White House approach until September 28, 2003, when the *Washington Post* reported that CIA Director George Tenet had requested a Justice Department investigation of the leak.¹⁶

After the *Washington Post* disclosed the CIA’s request for an investigation, the public statements from the White House changed in tone. For example, the President’s spokesman stated on September 29, 2003, that “the President believes leaking classified information is a very serious matter.”¹⁷ Shortly thereafter, the President reiterated, “This is a very serious matter, and our administration takes it seriously. ... I have told my staff, I want full cooperation with the Justice Department. ... I want there to be full participation because ... I am most interested in finding the truth.”¹⁸ Yet even now, it is unclear if the White House ever undertook its own inquiry, as the executive order requires. The *Washington Post* reported yesterday that, according

¹³ The White House, *Press Briefing by Scott McClellan* (July 22, 2003).

¹⁴ The White House, *Press Briefing by Scott McClellan* (July 23, 2003).

¹⁵ *Id.*

¹⁶ *Bush Administration Is Focus of Inquiry; CIA Agent's Identity Was Leaked to the Media*, *Washington Post* (Sept. 28, 2003).

¹⁷ The White House, *Press Briefing by Scott McClellan* (Sept. 29, 2003).

¹⁸ The White House, *President Bush, Kenyan President Kibaki Discuss State Visit* (Oct. 6, 2003).

to administration aides, "Rove has not been asked by senior White House officials whether he did anything illegal or potentially embarrassing to the president."¹⁹

There are also other administrative procedures that may have been violated by the White House following the publication of Mr. Novak's column. Some press accounts have suggested that White House officials compounded the security breach by directing reporters to the classified information after it was published in the Novak column.²⁰ Such actions would violate the administrative requirement against further dissemination of classified information or confirming the accuracy of classified information in a public source.

The Bush Administration's Responses to Other Alleged Security Breaches

The Administration's response to the alleged disclosures relating to Ms. Wilson stands in stark contrast to the Administration's swift response to other alleged breaches. For example:

- On Sunday evening, January 11, 2004, CBS's *60 Minutes* aired an interview with Secretary O'Neill in which he made negative comments about the Administration.²¹ On Monday, January 12, 2004, the Department of the Treasury announced that its Office of the Inspector General was investigating whether Secretary O'Neill inappropriately disclosed official documents, noting that a document marked "secret" was shown on the *60 Minutes* program as part of the interview.²²
- On June 19, 2002, media accounts disclosed that National Security Agency intercepts from September 10, 2001, contained cryptic references to possible attacks the next day, but that U.S. intelligence didn't translate them until September 12, 2001.²³ On June 20, 2002, "an irate" Vice President Cheney reportedly told congressional leaders that the President had "deep concerns" about these media reports, which had cited congressional sources. Congressional leaders immediately requested a Department of Justice investigation of the disclosure.²⁴

¹⁹ *GOP on Offense in Defense of Rove*, Washington Post (July 13, 2005).

²⁰ *Probe Focuses on Month before Leak to Reporters*, Washington Post (Oct. 12, 2003) (White House Press Secretary Scott McClellan "has denied that Rove was involved in leaking classified material but has refused to discuss the possibility of a campaign to call attention to the revelations in Novak's column"); see also *Terror Watch: Criminal or Just Plain Stupid?*, Newsweek (Oct. 8, 2003) (reporting that Karl Rove spoke directly to Chris Matthews, the host of the MSNBC show *Hardball*, about the Novak column and Ms. Plame: "A source familiar with Rove's conversation acknowledged that Rove spoke to Matthews a few days after Novak's column appeared" and further acknowledged that Mr. Rove said it "was reasonable to discuss who sent Wilson to Niger"). See also *Privilege Claim Is Possible in Leak Probe*, Los Angeles Times (Oct. 7, 2003) (reporting that White House officials have "attempted to draw a distinction between leaking the name of an operative and thereby breaking the law, and calling the attention of reporters to that information after it already has been made public").

²¹ *60 Minutes*, CBS News Transcripts (Jan. 11, 2004).

²² *O'Neill Says He Didn't Take U.S. Treasury Documents*, Reuters (Jan. 13, 2004).

²³ See, e.g., *NSA Studies Taped September 10 Messages*, Associated Press (June 19, 2002).

²⁴ *White House Angered by Leaks on Intelligence*, Los Angeles Times (June 21, 2002).

On the other hand, Administration officials apparently had a different policy regarding the extensive access *Washington Post* reporter Bob Woodward had to classified information in writing his book, *Bush At War*, which portrayed the White House favorably. In the introduction to this book, Mr. Woodward stated that *Bush At War* was based in part on “contemporaneous notes taken during more than 50 National Security Council and other meetings where the most important decisions were discussed and made” and “the written record — both classified and unclassified.”²⁵ Mr. Woodward also said: “War planning and war making involve secret information. I have used a good deal of it.”²⁶ Yet there appears to have been negligible investigation by the Administration of how Mr. Woodward obtained access to so much classified information.

As these examples demonstrate, there appears to be a pattern to the Administration’s responses to security breaches. Serious national security violations — including the outing of a covert CIA agent — appear to be ignored if the disclosures advance President Bush’s political agenda. But even groundless allegations, such as those made against former Secretary O’Neill, are vigorously pursued if the disclosures damage the White House. If this is accurate, it would be a reprehensible abrogation of America’s national security interests.

Conclusion

The White House’s refusal to respond to responsible questions about the outing of Ms. Wilson is compounding suspicions about the White House’s actions and motives. There should be no impediment, however, to your responding to questions about how the White House acted after the publication of Mr. Novak’s column. These questions do not seek information about who leaked Ms. Wilson’s identity or whether federal laws were violated. Instead, they ask about whether the Administration complied with its obligations under E.O. 12958 after the leak occurred.

For this reason, I urge you to explain what steps, if any, the Administration took after the July 14, 2003, disclosure by Robert Novak to comply with E.O. 12958. This explanation should, at a minimum, address whether the White House conducted an investigation of the alleged disclosure of sensitive information, whether the White House suspended any security clearances, and whether the White House took any other remedial action.

I look forward to your prompt response.

Sincerely,



Henry A. Waxman
Ranking Minority Member

²⁵ Bob Woodward, *Bush At War*, xi-xii (2002).

²⁶ *Id.* at xii.